

MINUTES
WV RACING COMMISSION
Tuesday, September 21, 2021
WV Racing Commission Conference Room

The WV Racing Commission met on September 21, 2021, to conduct business and consider administrative matters. Roll call was taken, and present were Chairman Ken Lowe Jr., Commissioner Figaretti, and Commissioner JB Akers. Counsel was represented by Kelli Talbott.

Approval of the June 16th and July 12th minutes

Motions to approve June 16th and July 12th minutes made by Commissioner JB Akers, seconded by Commissioner Figaretti. Motions were passed.

Executive Director's Report

Executive Director, Joe Moore, provided the following updates from the report. The parimutuel wagering comparison for Fiscal Year (FY) 2022 compared to FY21 to date shows; live handle is up 25.75% across the board, the export handle for all four tracks combined is up 20.25%, simulcast handle is down slightly by 6%, and total in-state handle is just up over 7% through the first two months of the fiscal year. Budget wise the Racing Commission did receive \$800,000 supplemental appropriation from the state excess lottery fund to fulfil the Racing Commission's statutory duties in the administrative account. Joe Moore will send an updated spreadsheet through the first two months shortly after this meeting, but he did not want to note receiving the money to go into the Racing Commission's general revenue fund. The Racing Commission is accepting applications to interview for two positions. The Racing Commission received about a month ago the IT Manager, Jon Cain, has accepted another position in the federal government. So, the Racing Commission is interviewing for an IT Manager here in the Charleston office. The Racing Commission also was notified about the retirement of the Charles Town Licensing Clerk, Donna Kercheval. So, the Racing Commission is accepting applications and will be interviewing for that position as well. The Racing Commission is currently in the budget process for FY23. He will send out the budget information to the commissioners as soon as it is prepared and finalized with the Secretary of Revenue's office. The draft financial statements have been received for FY21. He will send those out right after the meeting concludes.

Commissioner JB Akers would like to know what action should be taken to ensure the sustainability of the Racing Commission general admin budget. He asked if there should be a different approach to secure the financial situation with the Racing Commission.

Joe Moore understands completely what Commissioner JB Akers is saying. In the past efforts were made to put bill proposals forward to increase revenue. Last year, the department of Revenue preferred last year to handle the matter through excess

Lottery fund to do a supplemental appropriation. For this year a proposed bill has been submitted to increase revenue. The Racing Commission actively checks in and provides to try to make sure the Racing Commission has the financial means to meet its statutory requirements.

Legal Update

Legal Counsel, Kelli Talbott updated the Racing Commission on two rules proceeding through the legislative rule making process. She recalled that the amendments to the Thoroughbred Racing Rule were made. That has been filed with the legislature. The Racing Commission is waiting on the Legislative Rule Making Committee to put it on the agenda to consider in advance of the session. The other rule is just a technical issue. More recently the Legislature required all agencies to have a sunset date in their rule. It cannot be in kind of effective in perpetuity without some revisiting of it. So, the parimutuel wagering rule is actually scheduled to next year. The Racing Commission had to seek to file to seek an extension of that so that rule can continue to live so to speak. That rule is required by statute to be maintained by the Racing Commission. So, just to amend sunset date for another five years was before the Legislative Rule Making Committee in September. They passed it out without any questions or comments so that full Legislature can take it up during the session. So, you should know those two things. She is now handing off to Michael Williams with the Attorney General's office to provide an update on the status of the Horse Integrity and Safety Act (HISA).

Update on the HISA Lawsuit

Michael Williams reported the court will be decided on two motions. Motion filed by federal government. Motion to dismiss federal government's motion and summary judgement was submitted. Several appeared as amicus brief who are for or against. Several new states have joined in favor of lawsuit.

Chairman Lowe stated the sticking point for him is with Lasix. He asked if there anyway if HISA goes into effect to have Lasix provision removed.

Michael Williams stated the lawsuit is broad and if is won would strike down everything in it.

Kelli Talbott advised there is no imposed rule yet with HISA about Lasix.

Michael Williams believes there is a provision in place, and it would be struck down if lawsuit won.

Chairman Lowe stated if they do not strike that out it would be harmful to the industry and hurt the smaller tracks. He feels Lasix removal does not improve performance of racing.

Michael Williams understands Chairman Lowe's passion and is impressed with the lead state attorney taking on the HISA.

Chairman Lowe expressed his confidence in Michael Williams and Kelli Talbott.

Kelli Talbott she would not be the one appearing in court for the suit but is trying to stay abreast. There may be a need to have special session depending on the outcome.

West Virginia Breeders Classics, LTD Requests \$1,000,000 for Breeders Classic XXXV purses

Joe Moore presented the request for \$1,000,000 for the Breeder's Classic XXXV. Joe Moore reported funding is available to fulfill the request and recommends approving.

Commissioner Figaretti asked if it is a million-dollar race?.

Joe Moore answered it is not. It is spread across races. Main event is \$500k

Charlie McIntosh with Charles Town racetrack management informed the Racing Commission it is across 9 races.

Chairman Lowe asked Charlie McIntosh if the track depends on this race to help generate revenue.

Charlie McIntosh confirmed with yes.

Commissioner Figaretti how much advertising cost this year.

Erich Zimny reported an independent group is responsible for coordinating and advertising of the race.

Joe Moore shared previously to date advertising was \$50,000 of separate funding for it.

Motion to approve request made by Commissioner JB Akers, seconded by Commissioner Figaretti. Motion passes.

HCCTR Requests Approval of Change Order for CAFO Project

Charles Town Racetrack Facilities Director, Jeff Burnes, provided informed support of the request for approving the change order on the CAFO project. They moved a lot of scope of work phase c into phase b. Realized some of the shoring to get pits and structure in is cost beneficial to do in phase b instead of doing twice. The overall cost will show less. The additional 1.8 is taking money from next year's plan and doing it now.

Chairman Lowe, overall expenses should be the same.

Jeff Burnes, they are expecting to see roughly a \$500-800 savings overall by combining work in phase b. Everything they see in revised sow

Chairman Lowe, knows contractor well being local to the area. What is the contractor's fee on change order?

Jeff Burnes, 1 to 1.2%.

Chairman Lowe, when he looked at this Item #1 on exclusion list is substantial. When he sees words like asbestos could be costly. He trusts they know what they are doing. Are the Davis-Bacon wages applicable since this is not a federally funded project.

Jeff Burnes, will have to follow up.

Chairman Lowe, is there blasting for this project?

Jeff Burnes, blasting has been done before off grounds and not bothered horses or barns before. He is for blasting if it can save cost. He looks to

Chairman Lowe, likes contracts to have wording to say not to exceed. Does the current wording mean if the cost is below estimate money is saved?

Jeff Burnes, most work is fixed, but yes.

Chairman Lowe, why difference in pricing in Item#3. Rock extracted is extra. In item#4 it is less.

Jeff Burnes, will get with engineering for clarification

Chairman Lowe, item#6. item#8 provides horsemen timeline information to ensure safety. Is that fair Jeff Burnes.

Jeff Burnes, yes it is.

Chairman Lowe, this is good news to save this money to make that money available for other things needing done.

Motion to approve request made by Commissioner JB Akers, seconded by Commissioner Figaretti. Motion passes.

XpressBet Request approval of CY22 ADW License

Joe Moore presented the request for approving XpressBet Calendar Year 2022 license. There are no issues to report with Xpress standing with state and they have submitted renewal fee along with request. Joe Moore made note a minor change with the license format, but nothing that would keep the Commissioners from approving request. He recommends approving.

Commissioner JB Akers asked about what the change was.

Joe Moore will need to go back to review it the exact change.

Commissioner JB Akers stated if there is nothing from Joe Moore causing alarm then he supports it.

Motion to approve request made by Commissioner Figaretti, seconded by Commissioner JB Akers. Motion passes.

WVRC Racetracks Intent/Timeline returning to Pre-COVID operations

In response to WVRC's request approved in July meeting to provide plans to return to pre-covid operations. All tracks have submitted their plans.

Chairman Lowe asked if any tracks wish to provide any more info.

Delaware North Racetrack management, Kim Florence, made significant progress since submitting. Appreciates opportunity to submit their plan. Staffing has continued to be a challenge most notably in food n beverage. Wheeling October poker room. Hotel Catering restarted in end of July. Starting to accept requests for some events. Bringing entertainment back now restrictions are lifted. Mardi Gras reopened poker room last month. Hotel looking to go to seven days a week when fully staffed.

Chairman Lowe, good job Kim Florence, and looking forward to coming to see

Erich Zimny, pretty similar story to Delaware North with regards to staffing. Made progress with security. Food & Beverage continue to be challenge. Hotel is open and poker room too. Entertainment venue is back on the docket. Entertainment still a challenge. Continuing to try to fill in staff needed. They are forging ahead the best they can. We did see some success with Breeders Classic. Opened small section of Terrace. All hands-on deck situation, but it will be hard to duplicate.

Chairman Lowe commended them for doing a good job with promotions on apron.

Erich Zimny shared they are able to work with some vendors to do some.

Jim Colvin reported they have all of main amenities up and running with some being limited hours due to staffing issues. The only thing they do not have is banquets and entertainment.

Chairman Lowe thanked everyone for sharing the updates and greatly appreciates how much it helps.

Commissioner JB Akers also extended his appreciation the tracks for thier time and information.

Public Comments

Adjournment

Motion to adjourn was made by Commissioner Figaretti, seconded by Commissioner JB Akers. Motion was passed.